

REFERENCE TITLE: family leave insurance

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2422

Introduced by
Representatives Lopes: Gallardo, Prezelski

AN ACT

AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; RELATING
TO FAMILY LEAVE INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 23, Arizona Revised Statutes, is amended by adding
3 chapter 10, to read:

4 CHAPTER 10

5 FAMILY LEAVE INSURANCE

6 ARTICLE 1. GENERAL PROVISIONS

7 23-1601. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "APPLICATION YEAR" MEANS THE TWELVE-MONTH PERIOD BEGINNING ON THE
10 FIRST DAY OF THE CALENDAR WEEK IN WHICH AN INDIVIDUAL FILES AN APPLICATION
11 FOR FAMILY LEAVE INSURANCE BENEFITS AND, THEREAFTER, THE TWELVE-MONTH PERIOD
12 BEGINNING WITH THE FIRST DAY OF THE CALENDAR WEEK IN WHICH THE INDIVIDUAL
13 NEXT FILES AN APPLICATION FOR FAMILY LEAVE INSURANCE BENEFITS AFTER THE
14 EXPIRATION OF THE INDIVIDUAL'S LAST PRECEDING APPLICATION YEAR.

15 2. "CALENDAR QUARTER" HAS THE SAME MEANING PRESCRIBED IN SECTION
16 23-610.

17 3. "CHILD" MEANS A PERSON WHO IS A BIOLOGICAL, ADOPTED OR FOSTER
18 CHILD, A STEPCHILD, A LEGAL WARD OR A CHILD OF A PERSON STANDING IN LOCO
19 PARENTIS AND WHO IS EITHER:

20 (a) UNDER EIGHTEEN YEARS OF AGE.

21 (b) EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE
22 OF A MENTAL OR PHYSICAL DISABILITY, WHETHER PERMANENT OR TEMPORARY.

23 4. "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.

24 5. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF ECONOMIC
25 SECURITY.

26 6. "DOMESTIC PARTNER" MEANS AN UNMARRIED PERSON EIGHTEEN YEARS OF AGE
27 OR OLDER IF ALL THE FOLLOWING APPLY:

28 (a) WITH WHOM THE INDIVIDUAL ENTERED INTO A CLOSE PERSONAL
29 RELATIONSHIP WHEN BOTH PARTIES WERE MENTALLY COMPETENT AND HAS MAINTAINED A
30 CLOSE PERSONAL RELATIONSHIP SOLELY WITH THAT PERSON FOR A MINIMUM OF SIX
31 CONTINUOUS MONTHS.

32 (b) WITH WHOM THE INDIVIDUAL SHARES A REGULAR AND PERMANENT RESIDENCE.

33 (c) WITH WHOM THE INDIVIDUAL HAS AGREED TO BE JOINTLY RESPONSIBLE FOR
34 BASIC LIVING EXPENSES INCURRED DURING THE DOMESTIC PARTNERSHIP.

35 (d) TO WHOM THE INDIVIDUAL IS NOT RELATED BY BLOOD AS WOULD BAR
36 MARRIAGE.

37 7. "EMPLOYER" HAS THE SAME MEANING PRESCRIBED IN SECTION 23-613 AND
38 INCLUDES THIS STATE AND POLITICAL SUBDIVISIONS OF THIS STATE.

39 8. "EMPLOYMENT" HAS THE SAME MEANING PRESCRIBED IN SECTION 23-615.

40 9. "FAMILY AND MEDICAL LEAVE ACT" MEANS THE UNITED STATES FAMILY AND
41 MEDICAL LEAVE ACT OF 1993 (P.L. 103-3; 107 STAT. 6; 29 UNITED STATES CODE
42 CHAPTER 28).

43 10. "FAMILY LEAVE" MEANS LEAVE FROM EMPLOYMENT:

44 (a) TO CARE FOR A NEWBORN CHILD OR ADOPTED OR FOSTER CHILD OF THE
45 INDIVIDUAL OR THE INDIVIDUAL'S SPOUSE OR DOMESTIC PARTNER IF LEAVE IS

1 COMPLETED WITHIN TWELVE MONTHS AFTER THE BIRTH OR THE PLACEMENT FOR ADOPTION
2 OR FOSTER CARE, AS APPLICABLE.

3 (b) TO CARE FOR THE INDIVIDUAL'S FAMILY MEMBER WHO HAS A SERIOUS
4 HEALTH CONDITION.

5 (c) BECAUSE OF THE INDIVIDUAL'S SERIOUS HEALTH CONDITION THAT MAKES
6 THE INDIVIDUAL UNABLE TO PERFORM THE FUNCTIONS OF THE INDIVIDUAL'S POSITION.

7 11. "FAMILY LEAVE INSURANCE BENEFITS" MEANS THE BENEFITS PAYABLE
8 PURSUANT TO SECTIONS 23-1605 AND 23-1606.

9 12. "FAMILY MEMBER" MEANS A CHILD, SPOUSE OR DOMESTIC PARTNER OR THE
10 PARENT OF THE INDIVIDUAL OR INDIVIDUAL'S SPOUSE OR DOMESTIC PARTNER.

11 13. "HEALTH CARE PROVIDER" MEANS:

12 (a) A PERSON LICENSED AS A PHYSICIAN UNDER TITLE 32, CHAPTER 13.

13 (b) A PERSON LICENSED AS AN OSTEOPATHIC PHYSICIAN AND SURGEON UNDER
14 TITLE 32, CHAPTER 17.

15 (c) ANY OTHER PERSON DETERMINED BY THE DIRECTOR TO BE CAPABLE OF
16 PROVIDING HEALTH CARE SERVICES.

17 14. "PARENT" MEANS A BIOLOGICAL OR ADOPTIVE PARENT, A STEPPARENT OR AN
18 INDIVIDUAL WHO STOOD IN LOCO PARENTIS TO AN INDIVIDUAL OR AN INDIVIDUAL'S
19 SPOUSE OR DOMESTIC PARTNER WHEN THE INDIVIDUAL OR INDIVIDUAL'S SPOUSE OR
20 DOMESTIC PARTNER WAS A CHILD.

21 15. "PREMIUM" MEANS PAYMENTS REQUIRED BY THIS CHAPTER TO BE MADE TO THE
22 DEPARTMENT FOR THE FAMILY LEAVE INSURANCE FUND UNDER SECTION 23-1619.

23 16. "QUALIFYING YEAR" MEANS THE FIRST FOUR OF THE LAST FIVE COMPLETED
24 CALENDAR QUARTERS OR THE LAST FOUR COMPLETED CALENDAR QUARTERS IMMEDIATELY
25 PRECEDING THE FIRST DAY OF THE INDIVIDUAL'S APPLICATION YEAR.

26 17. "REGULARLY WORKING" MEANS THE AVERAGE NUMBER OF HOURS PER WORK WEEK
27 THAT AN INDIVIDUAL WORKED IN THE TWO QUARTERS OF THE INDIVIDUAL'S QUALIFYING
28 YEAR IN WHICH TOTAL WAGES WERE HIGHEST.

29 18. "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY, IMPAIRMENT OR
30 PHYSICAL OR MENTAL CONDITION THAT INVOLVES EITHER:

31 (a) A PERIOD OF INCAPACITY OR TREATMENT CONNECTED WITH INPATIENT CARE,
32 SUCH AS AN OVERNIGHT STAY, IN A HOSPITAL, HOSPICE OR RESIDENTIAL MEDICAL CARE
33 FACILITY AND A PERIOD OF INCAPACITY OR SUBSEQUENT TREATMENT OR RECOVERY IN
34 CONNECTION WITH THE INPATIENT CARE.

35 (b) CONTINUING TREATMENT BY OR UNDER THE SUPERVISION OF A HEALTH CARE
36 PROVIDER OR A PROVIDER OF HEALTH CARE SERVICES AND INCLUDES A PERIOD OF
37 INCAPACITY, SUCH AS AN INABILITY TO WORK, ATTEND SCHOOL OR PERFORM OTHER
38 REGULAR DAILY ACTIVITIES.

39 23-1602. Family leave insurance; claim procedure; outreach
40 program

41 A. THE DEPARTMENT SHALL ESTABLISH AND ADMINISTER A FAMILY LEAVE
42 INSURANCE PROGRAM AND PAY FAMILY LEAVE INSURANCE BENEFITS AS PRESCRIBED IN
43 THIS CHAPTER.

44 B. THE DEPARTMENT SHALL ESTABLISH PROCEDURES AND FORMS FOR FILING
45 CLAIMS FOR BENEFITS UNDER THIS CHAPTER. THE DEPARTMENT SHALL NOTIFY THE

1 EMPLOYER WITHIN FIVE BUSINESS DAYS OF A CLAIM BEING FILED UNDER SECTION
2 23-1603.

3 C. THE DEPARTMENT MAY REQUIRE THAT A CLAIM FOR BENEFITS UNDER THIS
4 CHAPTER BE SUPPORTED BY A CERTIFICATION THAT IS ISSUED BY A HEALTH CARE
5 PROVIDER PROVIDING HEALTH CARE TO THE INDIVIDUAL OR INDIVIDUAL'S FAMILY
6 MEMBER, AS APPLICABLE.

7 D. THE DEPARTMENT SHALL USE INFORMATION SHARING AND INTEGRATION
8 TECHNOLOGY TO FACILITATE THE DISCLOSURE OF RELEVANT INFORMATION OR RECORDS BY
9 THE DEPARTMENT, SO LONG AS AN INDIVIDUAL CONSENTS TO THE DISCLOSURE.

10 E. INFORMATION CONTAINED IN THE FILES AND RECORDS PERTAINING TO AN
11 INDIVIDUAL UNDER THIS CHAPTER IS CONFIDENTIAL AND NOT OPEN TO PUBLIC
12 INSPECTION EXCEPT TO PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR OFFICIAL
13 DUTIES. THE INDIVIDUAL OR AN AUTHORIZED REPRESENTATIVE OF AN INDIVIDUAL MAY
14 REVIEW THE RECORDS OR RECEIVE SPECIFIC INFORMATION FROM THE RECORDS ON THE
15 PRESENTATION OF THE SIGNED AUTHORIZATION OF THE INDIVIDUAL. AN EMPLOYER OR
16 THE EMPLOYER'S DULY AUTHORIZED REPRESENTATIVE MAY REVIEW THE RECORDS OF AN
17 INDIVIDUAL EMPLOYED BY THE EMPLOYER IN CONNECTION WITH A PENDING CLAIM. AT
18 THE DEPARTMENT'S DISCRETION, OTHER PERSONS MAY REVIEW RECORDS IF THE PERSONS
19 ARE RENDERING ASSISTANCE TO THE DEPARTMENT AT ANY STAGE OF THE PROCEEDINGS ON
20 ANY MATTER PERTAINING TO THE ADMINISTRATION OF THIS CHAPTER.

21 F. THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT AN OUTREACH PROGRAM TO
22 ENSURE THAT INDIVIDUALS WHO MAY BE ELIGIBLE TO RECEIVE FAMILY LEAVE INSURANCE
23 BENEFITS UNDER THIS CHAPTER ARE MADE AWARE OF THESE BENEFITS. OUTREACH
24 INFORMATION SHALL EXPLAIN, IN AN EASY TO UNDERSTAND FORMAT, ELIGIBILITY
25 REQUIREMENTS, THE CLAIMS PROCESS, WEEKLY BENEFIT AMOUNTS, MAXIMUM BENEFITS
26 PAYABLE, NOTICE AND MEDICAL CERTIFICATION REQUIREMENTS, REINSTATEMENT AND
27 NONDISCRIMINATION RIGHTS, CONFIDENTIALITY AND THE RELATIONSHIP BETWEEN
28 BENEFITS UNDER THIS CHAPTER AND OTHER LEAVE RIGHTS AND BENEFITS. OUTREACH
29 INFORMATION SHALL BE AVAILABLE IN ENGLISH AND OTHER PRIMARY LANGUAGES.

30 23-1603. Payment of benefits; filing; procedures

31 FROM AND AFTER DECEMBER 31, 2006, FAMILY LEAVE INSURANCE BENEFITS ARE
32 PAYABLE TO AN INDIVIDUAL DURING A PERIOD IN WHICH THE INDIVIDUAL IS ON FAMILY
33 LEAVE IF THE INDIVIDUAL:

34 1. FILES A CLAIM FOR BENEFITS IN EACH WEEK IN WHICH THE INDIVIDUAL IS
35 ON FAMILY LEAVE AND AS REQUIRED BY RULES ADOPTED BY THE DIRECTOR.

36 2. HAS BEEN EMPLOYED FOR AT LEAST SIX HUNDRED EIGHTY HOURS IN
37 EMPLOYMENT DURING THE INDIVIDUAL'S QUALIFYING YEAR.

38 3. ESTABLISHES AN APPLICATION YEAR. AN APPLICATION YEAR MAY NOT BE
39 ESTABLISHED IF THE QUALIFYING YEAR INCLUDES HOURS WORKED BEFORE ESTABLISHMENT
40 OF A PREVIOUS APPLICATION YEAR.

41 4. CONSENTS TO THE DISCLOSURE OF INFORMATION OR RECORDS DEEMED PRIVATE
42 AND CONFIDENTIAL UNDER SECTION 23-722. INITIAL DISCLOSURE OF THIS
43 INFORMATION AND THESE RECORDS BY THE DEPARTMENT IS SOLELY FOR PURPOSES
44 RELATED TO THE ADMINISTRATION OF THIS CHAPTER. FURTHER DISCLOSURE OF THIS
45 INFORMATION OR THESE RECORDS IS SUBJECT TO SECTIONS 23-1602 AND 23-1612.

1 5. DISCLOSES WHETHER OR NOT THE INDIVIDUAL OWES CHILD SUPPORT
2 OBLIGATIONS.

3 6. DOCUMENTS THAT THE INDIVIDUAL HAS PROVIDED THE EMPLOYER FROM WHOM
4 FAMILY LEAVE IS TO BE TAKEN WITH WRITTEN NOTICE OF THE INDIVIDUAL'S INTENTION
5 TO TAKE FAMILY LEAVE AS FOLLOWS:

6 (a) IF THE NECESSITY FOR FAMILY LEAVE AS DEFINED IN SECTION 23-1601,
7 PARAGRAPH 10, SUBDIVISION (a) WAS FORESEEABLE BASED ON AN EXPECTED BIRTH OR
8 PLACEMENT, NOTICE WAS GIVEN AT LEAST THIRTY DAYS BEFORE THE FAMILY LEAVE WAS
9 TO BEGIN STATING THE ANTICIPATED STARTING DATE AND ENDING DATE OF THE FAMILY
10 LEAVE, OR IF THE DATE OF BIRTH OR PLACEMENT REQUIRED FAMILY LEAVE TO BEGIN IN
11 LESS THAN THIRTY DAYS OR IF THE DATE OF BIRTH OR PLACEMENT REQUIRED FAMILY
12 LEAVE TO BE CHANGED OR EXTENDED, AS MUCH NOTICE AS PRACTICABLE WAS GIVEN.

13 (b) IF THE NECESSITY FOR FAMILY LEAVE AS DEFINED IN SECTION 23-1601,
14 PARAGRAPH 10, SUBDIVISION (b) OR (c) WAS FORESEEABLE BASED ON PLANNED MEDICAL
15 TREATMENT:

16 (i) NOTICE WAS GIVEN AT LEAST THIRTY DAYS BEFORE THE FAMILY LEAVE WAS
17 TO BEGIN STATING THE ANTICIPATED STARTING DATE AND ENDING DATE OF THE FAMILY
18 LEAVE, OR IF THE DATE OF THE TREATMENT REQUIRED FAMILY LEAVE TO BEGIN IN LESS
19 THAN THIRTY DAYS OR IF THE DATE OF THE TREATMENT REQUIRED FAMILY LEAVE TO BE
20 CHANGED OR EXTENDED, AS MUCH NOTICE AS PRACTICABLE WAS GIVEN.

21 (ii) THE INDIVIDUAL MADE REASONABLE EFFORTS TO SCHEDULE THE TREATMENT
22 SO AS NOT TO DISRUPT UNDULY THE OPERATIONS OF THE EMPLOYER, SUBJECT TO THE
23 APPROVAL OF THE HEALTH CARE PROVIDER OF THE INDIVIDUAL OR FAMILY MEMBER, AS
24 APPLICABLE.

25 7. IS NOT RECEIVING BENEFITS UNDER THE UNEMPLOYMENT COMPENSATION,
26 INDUSTRIAL INSURANCE, CRIME VICTIMS' COMPENSATION OR DISABILITY INSURANCE
27 LAWS OF THIS STATE, ANY OTHER STATE OR THE UNITED STATES.

28 23-1604. Disqualification of family leave insurance benefits

29 AN INDIVIDUAL IS DISQUALIFIED FROM FAMILY LEAVE INSURANCE BENEFITS
30 BEGINNING WITH THE FIRST DAY OF THE CALENDAR WEEK AND CONTINUING FOR THE NEXT
31 FIFTY-TWO CONSECUTIVE WEEKS IN WHICH THE INDIVIDUAL:

32 1. WILLFULLY MADE A FALSE STATEMENT OR MISREPRESENTATION REGARDING A
33 MATERIAL FACT OR WILLFULLY FAILED TO REPORT A MATERIAL FACT TO OBTAIN
34 BENEFITS UNDER THIS CHAPTER.

35 2. WITH RESPECT TO FAMILY LEAVE AS DEFINED IN SECTION 23-1601,
36 PARAGRAPH 10, SUBDIVISION (c), IS SUFFERING FROM A SERIOUS HEALTH CONDITION
37 RESULTING FROM THE INDIVIDUAL'S PERPETRATION OF A GROSS MISDEMEANOR OR
38 FELONY.

39 23-1605. Extent of payable benefits

40 A. THE MAXIMUM NUMBER OF WEEKS DURING WHICH FAMILY LEAVE INSURANCE
41 BENEFITS ARE PAYABLE IN AN APPLICATION YEAR IS FIVE WEEKS. BENEFITS ARE NOT
42 PAYABLE DURING A WAITING PERIOD CONSISTING OF THE FIRST FIVE WORK DAYS OF
43 FAMILY LEAVE TAKEN IN AN APPLICATION YEAR WITH RESPECT TO A PARTICULAR TYPE
44 OF FAMILY LEAVE, WHETHER THE FIRST FIVE WORK DAYS OF FAMILY LEAVE ARE
45 EMPLOYER PAID OR UNPAID.

1 B. THE FIRST PAYMENT OF BENEFITS MUST BE MADE TO AN INDIVIDUAL WITHIN
2 TWO WEEKS AFTER THE CLAIM IS FILED OR THE FAMILY LEAVE BEGAN, WHICHEVER IS
3 LATER, AND SUBSEQUENT PAYMENTS MUST BE MADE SEMIMONTHLY THEREAFTER.

4 C. THE PAYMENT OF BENEFITS UNDER THIS CHAPTER IS NOT CONSIDERED A
5 BINDING DETERMINATION OF THE OBLIGATIONS OF THE DEPARTMENT UNDER THIS
6 CHAPTER. THE ACCEPTANCE OF COMPENSATION BY THE INDIVIDUAL IS NOT CONSIDERED
7 A BINDING DETERMINATION OF THE INDIVIDUAL'S RIGHTS UNDER THIS CHAPTER. IF
8 ANY PAYMENT OF BENEFITS UNDER THIS CHAPTER HAS BEEN MADE AND TIMELY APPEAL
9 HAS BEEN MADE IN WHICH THE FINAL DECISION IS THAT THE PAYMENT WAS IMPROPER,
10 THE INDIVIDUAL SHALL REPAY THE BENEFIT AND RECOUPMENT MAY BE MADE FROM ANY
11 FUTURE PAYMENT DUE TO THE INDIVIDUAL ON ANY CLAIM UNDER THIS CHAPTER. THE
12 DIRECTOR MAY WAIVE, IN WHOLE OR IN PART, THE AMOUNT OF ANY SUCH PAYMENTS IN
13 WHICH THE RECOVERY WOULD BE AGAINST EQUITY AND GOOD CONSCIENCE.

14 D. IF AN INDIVIDUAL DIES BEFORE RECEIVING A PAYMENT OF BENEFITS, THE
15 PAYMENT SHALL BE MADE TO THE SURVIVING SPOUSE OR DOMESTIC PARTNER OR THE
16 CHILD OR CHILDREN IF THERE IS NO SURVIVING SPOUSE OR DOMESTIC PARTNER. IF
17 THERE IS NO SURVIVING SPOUSE OR DOMESTIC PARTNER AND NO CHILD OR CHILDREN,
18 THE PAYMENT SHALL BE MADE BY THE DEPARTMENT AND DISTRIBUTED CONSISTENT WITH
19 THE TERMS OF THE DECEDENT'S WILL OR, IF THE DECEDENT DIES INTESTATE,
20 CONSISTENT WITH THE TERMS OF TITLE 14, CHAPTER 2, ARTICLE 1.

21 E. BENEFITS ARE NOT PAYABLE AND WAITING PERIOD CREDITS ARE NOT EARNED
22 UNDER THIS CHAPTER FOR ANY WEEKS IN WHICH COMPENSATION IS PAID OR PAYABLE TO
23 THE INDIVIDUAL UNDER CHAPTER 4 OF THIS TITLE OR A SIMILAR LAW OF ANOTHER
24 STATE OR THE UNITED STATES OR UNDER CHAPTER 6 OF THIS TITLE OR ANOTHER STATE
25 OR FEDERAL WORKERS' COMPENSATION LAW.

26 23-1606. Benefit amount; deductions; withholdings

27 A. THE AMOUNT OF FAMILY LEAVE INSURANCE BENEFITS SHALL BE DETERMINED
28 AS FOLLOWS:

29 1. FOR WEEKS OF FAMILY LEAVE BEGINNING BEFORE JULY 1, 2007, THE WEEKLY
30 BENEFIT SHALL BE TWO HUNDRED FIFTY DOLLARS PER WEEK FOR AN INDIVIDUAL WHO AT
31 THE TIME OF BEGINNING FAMILY LEAVE WAS REGULARLY WORKING FORTY HOURS OR MORE
32 PER WEEK. BY JUNE 30, 2007, AND BY EACH SUBSEQUENT JUNE 30, THE DEPARTMENT
33 SHALL CALCULATE TO THE NEAREST DOLLAR AN ADJUSTED MAXIMUM WEEKLY BENEFIT TO
34 ACCOUNT FOR INFLATION USING THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS
35 FOR THE TWELVE COMPLETED CALENDAR MONTHS BEFORE EACH JUNE 30, THAT IS
36 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR BUREAU OF LABOR
37 STATISTICS. THE ADJUSTED MAXIMUM WEEKLY BENEFIT TAKES EFFECT FOR WEEKS OF
38 FAMILY LEAVE BEGINNING AFTER THE RELEVANT JUNE 30.

39 2. IF AN INDIVIDUAL WHO AT THE TIME OF BEGINNING FAMILY LEAVE WAS
40 REGULARLY WORKING FORTY HOURS OR MORE PER WEEK AND IS ON FAMILY LEAVE FOR
41 LESS THAN FORTY HOURS BUT AT LEAST EIGHT HOURS IN A WEEK, THE INDIVIDUAL'S
42 WEEKLY BENEFIT IS .025 TIMES THE MAXIMUM WEEKLY BENEFIT TIMES THE NUMBER OF
43 HOURS OF FAMILY LEAVE TAKEN IN THE WEEK. BENEFITS ARE NOT PAYABLE FOR LESS
44 THAN EIGHT HOURS OF FAMILY LEAVE TAKEN IN A WEEK.

1 3. FOR AN INDIVIDUAL WHO AT THE TIME OF BEGINNING FAMILY LEAVE WAS
2 REGULARLY WORKING LESS THAN FORTY HOURS PER WEEK, THE DEPARTMENT SHALL
3 CALCULATE A PRORATED SCHEDULE FOR A WEEKLY BENEFIT AMOUNT AND A MINIMUM
4 NUMBER OF HOURS OF FAMILY LEAVE THAT MUST BE TAKEN IN A WEEK FOR BENEFITS TO
5 BE PAYABLE, WITH THE PRORATED SCHEDULE BASED ON THE AMOUNTS AND THE
6 CALCULATIONS PRESCRIBED UNDER PARAGRAPHS 1 AND 2.

7 B. IF AN INDIVIDUAL DISCLOSES THAT THE INDIVIDUAL OWES CHILD SUPPORT
8 OBLIGATIONS AND THE DEPARTMENT DETERMINES THAT THE INDIVIDUAL IS ELIGIBLE FOR
9 BENEFITS, THE DEPARTMENT SHALL NOTIFY THE APPLICABLE STATE CHILD SUPPORT
10 ENFORCEMENT AGENCY AND DEDUCT AND WITHHOLD AN AMOUNT FROM BENEFITS IN A
11 MANNER CONSISTENT WITH SECTION 23-789.

12 C. IF THE INTERNAL REVENUE SERVICE DETERMINES THAT FAMILY LEAVE
13 INSURANCE BENEFITS UNDER THIS CHAPTER ARE SUBJECT TO FEDERAL INCOME TAX AND
14 AN INDIVIDUAL ELECTS TO HAVE FEDERAL INCOME TAX DEDUCTED AND WITHHELD FROM
15 BENEFITS, THE DEPARTMENT SHALL DEDUCT AND WITHHOLD THE AMOUNT SPECIFIED IN
16 THE FEDERAL INTERNAL REVENUE CODE IN A MANNER CONSISTENT WITH SECTION
17 23-1607.

18 23-1607. Deduction for taxes; notification

19 A. IF THE INTERNAL REVENUE SERVICE DETERMINES THAT FAMILY LEAVE
20 INSURANCE BENEFITS UNDER THIS CHAPTER ARE SUBJECT TO FEDERAL INCOME TAX, THE
21 DEPARTMENT SHALL ADVISE AN INDIVIDUAL FILING A NEW CLAIM FOR FAMILY LEAVE
22 INSURANCE BENEFITS AT THE TIME OF FILING THE CLAIM THAT:

23 1. THE INTERNAL REVENUE SERVICE HAS DETERMINED THAT BENEFITS ARE
24 SUBJECT TO FEDERAL INCOME TAX.

25 2. REQUIREMENTS EXIST PERTAINING TO ESTIMATED TAX PAYMENTS.

26 3. THE INDIVIDUAL MAY ELECT TO HAVE FEDERAL INCOME TAX DEDUCTED AND
27 WITHHELD FROM THE INDIVIDUAL'S PAYMENT OF BENEFITS AT THE AMOUNT PRESCRIBED
28 IN THE FEDERAL INTERNAL REVENUE CODE.

29 4. THE INDIVIDUAL IS PERMITTED TO CHANGE A PREVIOUSLY ELECTED
30 WITHHOLDING STATUS.

31 B. AMOUNTS DEDUCTED AND WITHHELD FROM BENEFITS REMAIN IN THE FAMILY
32 LEAVE INSURANCE FUND ESTABLISHED BY SECTION 23-1619 UNTIL TRANSFERRED TO THE
33 FEDERAL TAXING AUTHORITY AS A PAYMENT OF INCOME TAX.

34 C. THE DIRECTOR SHALL FOLLOW ALL PROCEDURES PRESCRIBED BY THE FEDERAL
35 INTERNAL REVENUE SERVICE PERTAINING TO THE DEDUCTING AND WITHHOLDING OF
36 INCOME TAX.

37 23-1608. Erroneous benefit payments

38 IF FAMILY LEAVE INSURANCE BENEFITS ARE PAID ERRONEOUSLY OR AS A RESULT
39 OF WILLFUL MISREPRESENTATION OR IF A CLAIM FOR FAMILY LEAVE BENEFITS IS
40 REJECTED AFTER BENEFITS ARE PAID, APPEALS SHALL BE GOVERNED BY TITLE 41,
41 CHAPTER 14, ARTICLE 3, PENALTIES SHALL BE PAID INTO THE FAMILY LEAVE
42 INSURANCE FUND ESTABLISHED BY SECTION 23-1619 AND THE DEPARTMENT SHALL SEEK
43 REPAYMENT OF BENEFITS FROM THE RECIPIENT.

23-1609. Reinstatement by employer after family leave

A. DURING A PERIOD IN WHICH AN INDIVIDUAL RECEIVES FAMILY LEAVE INSURANCE BENEFITS UNDER THIS CHAPTER, THE INDIVIDUAL IS ENTITLED TO FAMILY LEAVE, AND AT THE ESTABLISHED ENDING DATE OF LEAVE, TO BE REINSTATED IN THE INDIVIDUAL'S POSITION WITH THE EMPLOYER FROM WHOM LEAVE WAS TAKEN SUBJECT TO THE FOLLOWING:

1. AN EMPLOYER MAY REQUIRE THAT FAMILY LEAVE FOR WHICH AN INDIVIDUAL IS RECEIVING OR RECEIVED FAMILY LEAVE INSURANCE BENEFITS UNDER THIS CHAPTER BE TAKEN CONCURRENTLY WITH LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT, EXCEPT THAT:

(a) FAMILY LEAVE TAKEN FOR SICKNESS OR TEMPORARY DISABILITY BECAUSE OF PREGNANCY OR CHILDBIRTH IS IN ADDITION TO LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT.

(b) FAMILY LEAVE DURING WHICH THE INDIVIDUAL IS RECEIVING OR RECEIVED FAMILY LEAVE INSURANCE BENEFITS UNDER THIS CHAPTER IS IN ADDITION TO LEAVE FROM EMPLOYMENT DURING WHICH BENEFITS ARE PAID OR ARE PAYABLE UNDER CHAPTER 6 OF THIS TITLE OR ANOTHER STATE OR FEDERAL WORKERS' COMPENSATION LAW AND THAT IS DESIGNATED AS LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT.

2. IF AN EMPLOYER REQUIRES THAT FAMILY LEAVE FOR WHICH AN INDIVIDUAL IS RECEIVING OR RECEIVED BENEFITS UNDER THIS CHAPTER BE TAKEN CONCURRENTLY WITH LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT, THE EMPLOYER SHALL GIVE ALL INDIVIDUALS IN ITS EMPLOY WRITTEN NOTICE OF THE REQUIREMENT.

B. IF THE INDIVIDUAL IS ENTITLED, ON RETURN FROM FAMILY LEAVE UNDER THIS CHAPTER, TO REINSTATEMENT UNDER THE FAMILY AND MEDICAL LEAVE ACT, OR OTHER APPLICABLE FEDERAL OR STATE LAW, OTHER THAN THIS CHAPTER, REINSTATEMENT IS REQUIRED AS PROVIDED UNDER THE APPLICABLE LAW MOST FAVORABLE TO THE INDIVIDUAL.

C. IF THE INDIVIDUAL IS NOT ENTITLED TO REINSTATEMENT ON RETURN FROM FAMILY LEAVE UNDER SUBSECTION B, THE INDIVIDUAL IS ENTITLED, ON RETURN FROM LEAVE UNDER THIS CHAPTER, TO BE REINSTATED:

1. IN THE SAME POSITION HELD BY THE INDIVIDUAL WHEN THE LEAVE COMMENCED.

2. IN A POSITION WITH EQUIVALENT BENEFITS AND PAY AT A WORKPLACE WITHIN TWENTY MILES OF THE INDIVIDUAL'S WORKPLACE WHEN LEAVE COMMENCED.

3. IF THE EMPLOYER'S CIRCUMSTANCES HAVE SO CHANGED THAT THE INDIVIDUAL CANNOT BE REINSTATED IN THE SAME POSITION OR A POSITION OF EQUIVALENT PAY AND BENEFITS, IN ANY OTHER POSITION THAT IS VACANT AND FOR WHICH THE INDIVIDUAL IS QUALIFIED.

D. THE ENTITLEMENT UNDER SUBSECTION C IS SUBJECT TO BONA FIDE CHANGES IN COMPENSATION OR WORK DUTIES AND DOES NOT APPLY IF:

1. THE INDIVIDUAL'S POSITION IS ELIMINATED BY A BONA FIDE RESTRUCTURING OR REDUCTION IN FORCE.

2. THE INDIVIDUAL'S WORKPLACE IS PERMANENTLY OR TEMPORARILY SHUT DOWN FOR AT LEAST THIRTY DAYS.

3. THE INDIVIDUAL'S WORKPLACE IS MOVED TO A LOCATION AT LEAST SIXTY MILES FROM THE LOCATION OF THE WORKPLACE WHEN LEAVE COMMENCED.

4. AN INDIVIDUAL ON FAMILY LEAVE TAKES ANOTHER JOB.

5. THE INDIVIDUAL FAILS TO RETURN ON THE ESTABLISHED ENDING DATE OF LEAVE.

E. AN INDIVIDUAL WHO HAS BEEN ON FAMILY LEAVE WHILE RECEIVING FAMILY LEAVE INSURANCE BENEFITS UNDER THIS CHAPTER SHALL NOT LOSE ANY EMPLOYMENT BENEFIT, INCLUDING SENIORITY OR PENSION RIGHTS, THAT ACCRUED BEFORE THE DATE FAMILY LEAVE COMMENCED. THIS CHAPTER DOES NOT ENTITLE AN INDIVIDUAL TO ACCRUE EMPLOYMENT BENEFITS DURING A PERIOD OF FAMILY LEAVE OR TO A RIGHT, BENEFIT OR POSITION OF EMPLOYMENT OTHER THAN A RIGHT, BENEFIT OR POSITION TO WHICH THE INDIVIDUAL WOULD HAVE BEEN ENTITLED HAD THE INDIVIDUAL NOT TAKEN FAMILY LEAVE.

23-1610. Alternative paid family leave; availability

A. THIS CHAPTER DOES NOT LIMIT AN INDIVIDUAL'S RIGHT TO LEAVE FROM EMPLOYMENT UNDER OTHER LAWS, COLLECTIVE BARGAINING AGREEMENTS OR EMPLOYER POLICY, AS APPLICABLE, EXCEPT AS PROVIDED IN THIS CHAPTER.

B. IF AN EMPLOYER PROVIDES PAID FAMILY LEAVE THROUGH DISABILITY INSURANCE OR ANY OTHER MEANS, THE INDIVIDUAL MAY ELECT WHETHER FIRST TO USE THE PAID FAMILY LEAVE OR TO RECEIVE FAMILY LEAVE INSURANCE BENEFITS UNDER THIS CHAPTER. AN INDIVIDUAL MAY NOT BE REQUIRED TO USE THE INDIVIDUAL'S PAID FAMILY LEAVE TO WHICH THE INDIVIDUAL IS OTHERWISE ENTITLED BEFORE RECEIVING BENEFITS UNDER THIS CHAPTER.

23-1611. Noncovered employers; self-employed; election of coverage

A. AN EMPLOYER OF INDIVIDUALS NOT COVERED BY THIS CHAPTER OR A SELF-EMPLOYED PERSON, INCLUDING A SOLE PROPRIETOR, PARTNER OR JOINT VENTURER, MAY ELECT COVERAGE UNDER THIS CHAPTER FOR ALL INDIVIDUALS IN ITS EMPLOY FOR AN INITIAL PERIOD OF AT LEAST THREE YEARS OR A SUBSEQUENT PERIOD OF AT LEAST ONE YEAR IMMEDIATELY FOLLOWING ANOTHER PERIOD OF COVERAGE. THE EMPLOYER OR SELF-EMPLOYED PERSON SHALL FILE A NOTICE OF ELECTION IN WRITING WITH THE DIRECTOR, AS REQUIRED BY THE DEPARTMENT. THE ELECTION BECOMES EFFECTIVE ON THE DATE OF FILING THE NOTICE.

B. AN EMPLOYER OR SELF-EMPLOYED PERSON WHO HAS ELECTED COVERAGE MAY WITHDRAW FROM COVERAGE WITHIN THIRTY DAYS AFTER THE END OF THE THREE YEAR PERIOD OF COVERAGE, OR AT OTHER TIMES AS THE DIRECTOR PRESCRIBES BY RULE, BY FILING WRITTEN NOTICE WITH THE DIRECTOR. THE WITHDRAWAL SHALL TAKE EFFECT AT LEAST THIRTY DAYS AFTER FILING THE NOTICE. WITHIN FIVE DAYS OF FILING WRITTEN NOTICE OF THE WITHDRAWAL WITH THE DIRECTOR, AN EMPLOYER SHALL PROVIDE WRITTEN NOTICE OF THE WITHDRAWAL TO ALL INDIVIDUALS IN THE EMPLOYER'S EMPLOY.

C. THE DEPARTMENT MAY CANCEL ELECTIVE COVERAGE IF THE EMPLOYER OR SELF-EMPLOYED PERSON FAILS TO MAKE REQUIRED PAYMENTS OR REPORTS. THE DEPARTMENT MAY COLLECT DUE AND UNPAID PREMIUMS AND MAY LEVY AN ADDITIONAL PREMIUM FOR THE REMAINDER OF THE PERIOD OF COVERAGE. THE CANCELLATION IS EFFECTIVE NO LATER THAN THIRTY DAYS FROM THE DATE OF THE NOTICE IN WRITING

1 ADVISING THE EMPLOYER OR SELF-EMPLOYED PERSON OF THE CANCELLATION. WITHIN
2 FIVE DAYS OF RECEIVING WRITTEN NOTICE OF THE CANCELLATION FROM THE DIRECTOR,
3 AN EMPLOYER SHALL PROVIDE WRITTEN NOTICE OF THE CANCELLATION TO ALL
4 INDIVIDUALS IN THE EMPLOYER'S EMPLOY.

5 23-1612. Reports: confidentiality

6 A. IN THE FORM AND AT THE TIMES SPECIFIED BY THE DIRECTOR, AN EMPLOYER
7 SHALL MAKE REPORTS, FURNISH INFORMATION AND REMIT PREMIUMS AS REQUIRED BY
8 SECTION 23-1618 TO THE DEPARTMENT. IF THE EMPLOYER IS A TEMPORARY HELP
9 COMPANY THAT PROVIDES EMPLOYEES ON A TEMPORARY BASIS TO ITS CUSTOMERS, THE
10 TEMPORARY HELP COMPANY IS CONSIDERED THE EMPLOYER FOR PURPOSES OF THIS
11 SECTION. IF THE TEMPORARY HELP COMPANY FAILS TO REMIT THE REQUIRED PREMIUMS,
12 THE CUSTOMER TO WHOM THE EMPLOYEES WERE PROVIDED IS LIABLE FOR PAYING THE
13 PREMIUMS.

14 B. AN EMPLOYER SHALL KEEP AT THE EMPLOYER'S PLACE OF BUSINESS A RECORD
15 OF EMPLOYMENT FROM WHICH THE INFORMATION NEEDED BY THE DEPARTMENT FOR
16 PURPOSES OF THIS CHAPTER MAY BE OBTAINED. THIS RECORD SHALL AT ALL TIMES BE
17 OPEN TO THE INSPECTION OF THE DIRECTOR OR DEPARTMENT EMPLOYEES DESIGNATED BY
18 THE DIRECTOR.

19 C. INFORMATION OBTAINED FROM EMPLOYER RECORDS UNDER THIS CHAPTER IS
20 CONFIDENTIAL AND NOT OPEN TO PUBLIC INSPECTION, OTHER THAN TO PUBLIC
21 EMPLOYEES IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES. AN INTERESTED PARTY
22 SHALL BE SUPPLIED WITH INFORMATION FROM EMPLOYER RECORDS TO THE EXTENT
23 NECESSARY FOR THE PROPER PRESENTATION OF THE CASE IN QUESTION. AN EMPLOYER
24 MAY AUTHORIZE INSPECTION OF ITS RECORDS BY WRITTEN CONSENT.

25 D. THE REQUIREMENTS RELATING TO THE ASSESSMENT AND COLLECTION OF
26 FAMILY LEAVE INSURANCE PREMIUMS ARE THE SAME AS THE REQUIREMENTS RELATING TO
27 THE ASSESSMENT AND COLLECTION OF WORKERS' COMPENSATION PREMIUMS UNDER CHAPTER
28 6 OF THIS TITLE, INCLUDING PENALTIES, INTEREST AND DEPARTMENT LIEN RIGHTS AND
29 COLLECTION REMEDIES. THESE REQUIREMENTS APPLY TO:

30 1. AN EMPLOYER THAT FAILS UNDER THIS CHAPTER TO MAKE THE REQUIRED
31 REPORTS OR FAILS TO REMIT THE FULL AMOUNT OF THE PREMIUMS WHEN DUE.

32 2. AN EMPLOYER THAT WILLFULLY MAKES A FALSE STATEMENT OR
33 MISREPRESENTATION REGARDING A MATERIAL FACT, OR WILLFULLY FAILS TO REPORT A
34 MATERIAL FACT, TO AVOID MAKING THE REQUIRED REPORTS OR REMITTING THE FULL
35 AMOUNT OF THE PREMIUMS WHEN DUE UNDER THIS CHAPTER.

36 3. AN OFFICER, MEMBER, MANAGER OR OTHER PERSON HAVING CONTROL OR
37 SUPERVISION OF PAYMENT OR REPORTING OF FAMILY LEAVE INSURANCE.

38 23-1613. Appeals

39 A PERSON AGGRIEVED BY A DECISION OF THE DEPARTMENT UNDER THIS CHAPTER
40 MAY FILE A NOTICE OF APPEAL WITH THE DIRECTOR, BY MAIL OR PERSONALLY, WITHIN
41 THIRTY DAYS AFTER THE DATE ON WHICH A COPY OF THE DEPARTMENT'S DECISION WAS
42 COMMUNICATED TO THE PERSON. APPEALS ARE GOVERNED BY TITLE 41, CHAPTER 14,
43 ARTICLE 3.

23-1614. Discrimination or retaliation prohibited

AN EMPLOYER, TEMPORARY HELP COMPANY, EMPLOYMENT AGENCY, EMPLOYEE ORGANIZATION OR OTHER PERSON MAY NOT DISCHARGE, EXPEL OR OTHERWISE DISCRIMINATE AGAINST A PERSON BECAUSE THE PERSON HAS FILED OR COMMUNICATED TO THE EMPLOYER AN INTENT TO FILE A CLAIM, A COMPLAINT OR AN APPEAL OR HAS TESTIFIED OR IS ABOUT TO TESTIFY OR HAS ASSISTED IN ANY PROCEEDING UNDER THIS CHAPTER AT ANY TIME, INCLUDING DURING THE WAITING PERIOD DESCRIBED IN SECTION 23-1605 AND THE PERIOD IN WHICH THE PERSON RECEIVES FAMILY LEAVE INSURANCE BENEFITS UNDER THIS CHAPTER.

23-1615. Additional family leave benefits allowed; benefits not to be diminished

A. THIS CHAPTER IS NOT INTENDED TO DISCOURAGE EMPLOYERS FROM ADOPTING OR RETAINING POLICIES THAT PROVIDE ADDITIONAL BENEFITS TO INDIVIDUALS TO ADDRESS FAMILY LEAVE NEEDS.

B. THIS CHAPTER IS NOT TO BE CONSTRUED TO DIMINISH AN EMPLOYER'S OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYMENT BENEFIT PROGRAM OR PLAN THAT PROVIDES GREATER BENEFITS TO INDIVIDUALS THAN THE FAMILY LEAVE INSURANCE BENEFITS PROVIDED UNDER THIS CHAPTER.

C. AN AGREEMENT BY AN INDIVIDUAL TO WAIVE THE INDIVIDUAL'S RIGHTS UNDER THIS CHAPTER IS VOID AS AGAINST PUBLIC POLICY.

D. THE BENEFITS PROVIDED TO INDIVIDUALS UNDER THIS CHAPTER MAY NOT BE DIMINISHED BY A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYMENT BENEFIT PROGRAM OR PLAN ENTERED INTO OR RENEWED AFTER THE EFFECTIVE DATE OF THIS ACT.

23-1616. Reservation to legislature

THIS CHAPTER DOES NOT CREATE A CONTINUING ENTITLEMENT OR CONTRACTUAL RIGHT. THE LEGISLATURE RESERVES THE RIGHT TO AMEND OR REPEAL ALL OR PART OF THIS CHAPTER AT ANY TIME, AND A BENEFIT OR OTHER RIGHT GRANTED UNDER THIS CHAPTER EXISTS SUBJECT TO THE LEGISLATURE'S POWER TO AMEND OR REPEAL THIS CHAPTER. THERE IS NO VESTED PRIVATE RIGHT OF ANY KIND AGAINST THE AMENDMENT OR REPEAL.

23-1617. Rules

THE DIRECTOR MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS CHAPTER. IN ADOPTING RULES, THE DIRECTOR SHALL MAINTAIN CONSISTENCY WITH THE RULES ADOPTED TO IMPLEMENT THE FAMILY AND MEDICAL LEAVE ACT TO THE EXTENT THOSE RULES ARE NOT IN CONFLICT WITH THIS CHAPTER.

23-1618. Premiums

A. FROM AND AFTER SEPTEMBER 30, 2006, FOR EACH INDIVIDUAL, EACH EMPLOYER SHALL SUBMIT A PREMIUM OF TWO CENTS PER HOUR WORKED, UP TO A MAXIMUM OF FORTY HOURS PER WEEK, TO THE DEPARTMENT IN THE MANNER AND AT SUCH INTERVALS AS THE DEPARTMENT DIRECTS FOR DEPOSIT IN THE FAMILY LEAVE INSURANCE FUND. IN THE PAYMENT OF PREMIUMS, A FRACTIONAL PART OF A CENT SHALL BE DISREGARDED UNLESS IT AMOUNTS TO ONE-HALF CENT OR MORE, IN WHICH CASE IT SHALL BE INCREASED TO ONE CENT.

B. THE DIRECTOR SHALL ADJUST THE AMOUNT OF THE PREMIUM FROM TIME TO TIME TO ENSURE THAT THE AMOUNT IS THE LOWEST RATE NECESSARY TO PAY FAMILY

1 LEAVE INSURANCE BENEFITS AND ADMINISTRATIVE COSTS, AND MAINTAIN ACTUARIAL
2 SOLVENCY IN ACCORDANCE WITH RECOGNIZED INSURANCE PRINCIPLES, OF THE FAMILY
3 LEAVE INSURANCE PROGRAM ON A CURRENT BASIS.

4 C. ONE-HALF OF THE AMOUNT ASSESSED FOR THE FAMILY LEAVE INSURANCE
5 ACCOUNT MAY BE RETAINED FROM THE EARNINGS OF EACH INDIVIDUAL.

6 23-1619. Family leave insurance fund

7 A. THE FAMILY LEAVE INSURANCE FUND IS ESTABLISHED CONSISTING OF MONIES
8 FROM THE PREMIUM IMPOSED PURSUANT TO SECTION 23-1618 AND THE PENALTIES
9 IMPOSED PURSUANT TO SECTION 23-1612. THE DIRECTOR SHALL DEPOSIT THE MONIES
10 IN THE FUND PURSUANT TO SECTIONS 35-146 AND 35-147. THE DEPARTMENT SHALL
11 ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND
12 MAY BE USED ONLY FOR THE PURPOSES OF THE FAMILY LEAVE INSURANCE PROGRAM.

13 B. ON NOTICE FROM THE DEPARTMENT, THE STATE TREASURER SHALL INVEST AND
14 DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED
15 FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

16 Sec. 2. Requirements for enactment; two-thirds vote

17 Pursuant to article IX, section 22, Constitution of Arizona, this act
18 is effective only on the affirmative vote of at least two-thirds of the
19 members of each house of the legislature and is effective immediately on the
20 signature of the governor or, if the governor vetoes this act, on the
21 subsequent affirmative vote of at least three-fourths of the members of each
22 house of the legislature.